

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THE STATE OF IOWA, ex rel.
THOMAS J. MILLER, ATTORNEY GENERAL

Plaintiff,

vs

LIFELOCK, INC.,
a Delaware Corporation,

Defendant.

PETITION

Equity No. CE 64768

PETITION FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, THE STATE OF IOWA, ex rel. ATTORNEY GENERAL THOMAS J. MILLER, by William L. Brauch, Special Assistant Attorney General, brings this action complaining of Defendant, LIFELOCK, INC., a Delaware corporation (hereinafter referred to as "Defendant"), and states as follows:

I. JURISDICTION AND VENUE

1. This action is brought for and on behalf of THE STATE OF IOWA, by Thomas, J Miller, Attorney General of the State of Illinois, pursuant to the provisions of the Iowa Consumer Fraud Act, Iowa Code § 714.16, and the Fair Credit Reporting Act, 15 U.S.C. § 1681s(c)(1).

2. Venue for this action properly lies in Polk County, Iowa, pursuant to Iowa Code § 714.16, in that some of the transactions complained of herein out of which this action arose occurred in Polk County.

II. PARTIES

3. Plaintiff, THE STATE OF IOWA, by THOMAS J. MILLER, Attorney General of the State of Iowa, is charged, inter alia, with the enforcement of the Consumer Fraud Act, and has authority as chief law enforcement officer in the State to enforce the Fair Credit Reporting Act, 15 U.S.C. § 1681s(c)(1).

4. Defendant, LIFELOCK, INC., is a Delaware corporation that is not registered as a foreign corporation, doing business in Illinois.

III. ADVERTISING AND SELLING MERCHANDISE IN IOWA

5. Iowa Code § 714.16(2)(a) applies to the sale, lease or advertisement of merchandise in the State of Iowa. Defendant was at all times relevant hereto, engaged in the advertisement and sale of merchandise in the State of Iowa to wit: advertising, soliciting, offering for sale and selling of identity theft protection services, and accepting monies from Iowa consumers for the same.

IV. DEFENDANT'S COURSE OF CONDUCT

A. Defendant's Services Offered

6. Since at least July 4, 2005, Defendant has engaged in advertisement or sale of merchandise by advertising, soliciting, offering for sale, and selling identity theft protection services to Iowa consumers.

7. Defendant charges consumers \$10.00 per month, or \$110.00 per year, for its identity theft protection services.

8. Prior to September 2009, Defendant took the following steps for each consumer upon enrollment in its identity theft protection services:

- A. Requested that credit reporting agencies place a fraud alert on the consumer's credit record – a free service available to every consumer under the Fair Credit Reporting Act; and
- B. Renewed fraud alerts that it placed with credit reporting agencies on behalf of its consumers every 90 days until instructed otherwise by the consumer.

9. After September 2009, Defendant discontinued the services specified in paragraph 9, but continued to offer identity theft protection services to consumers.

10. After a customer enrolls in the identity theft protection service, Defendant orders each customer's free annual credit reports from each of the credit reporting agencies – free service available to every consumer under the Fair Credit Reporting Act.

11. After a customer enrolls in the identity theft protection service, Defendant sends opt-out requests to credit reporting agencies requesting that customer's removal from pre-approved credit offer lists.

12. According to its Web site, Defendant's eRecon™ service "scours thousands of known criminal websites for illegal selling or trading of your personal information."

13. According to its Web site, Defendant's TrueAddress™ service "proactively detect[s] any new address information in address databases nationwide."

14. Defendant offers identity theft protection services for children.

B. Defendant's Representations Concerning the Effectiveness of Services

15. A full page advertisement in the Chicago Tribune, dated September 16, 2006, offered a promotion for Chicago residents and stated "[o]ur company makes your personal information useless to any criminal immediately. We guarantee it."

16. A full page advertisement in The Wall Street Journal dated June 30, 2008 that appeared to be a news article about identity theft stated, "LifeLock became the nation's leader in identity theft protection by taking a proactive approach to protecting consumers from identity theft."

17. That same full page advertisement in The Wall Street Journal dated June 30, 2008, stated, "I'm Todd Davis, CEO of LifeLock, and 457-55-5462 is my real Social Security number. I give it out to show how confident I am in LifeLock's proactive identity theft protection."

18. A full page advertisement in the Chicago Tribune dated September 24, 2009, contains a picture of Todd Davis displaying his Social Security number and the caption reads in part, "Todd Davis, CEO of identity theft protection company LifeLock, demonstrates his confidence in his company by sharing his Social Security number."

19. As of July 24, 2008, Defendant's Web site stated "LifeLock, the industry leader in proactive identity theft protection, offers a proven solution that prevents your identity from being stolen before it happens."

20. As of July 23, 2008, Defendant's Web site stated, with respect to identity theft protection for minor children that "[w]e were the first company in the country that makes sure that kids are protected from Identity thieves."

21. The Wall Street Journal advertisement dated June 30, 2008 quotes Defendant's CEO Todd Davis describing the Defendant's service that searched for information in criminal chat rooms: "We're working around the clock monitoring criminal web sites for the illegal selling and trading of our member's information...."

22. Defendant does not remove information found on criminal web sites, but rather notifies customers that such information has been compromised.

C. Defendant's Representations about Fraud Alerts

23. As of July 7, 2008, Defendant's Web site stated that after a fraud alert was placed, "[i]f someone is trying to use your personal information, you will be contacted by the creditor that is issuing the line of credit. If you receive a call and you are not the one applying for credit, the transaction should be stopped immediately."

24. As of July 7, 2008, Defendant's Web site further stated that when a fraud alert is in place, "[e]very time you apply for new credit or someone tries to do something with your credit: You should receive a phone call from the bank asking if you are actually the person applying for credit in your name. If you are, great. If not, the transaction stops."

25. As of June 11, 2009, Defendant's Web site stated, "LifeLock places fraud alert requests at the three credit bureaus and automatically renews the requests every 90 days. It does not freeze your credit, rather; it safeguards your credit from unauthorized use."

D. Defendant's Representations Concerning Risk of Identity Theft

26. In February 2009, Defendant caused to be mailed to consumers in Illinois a direct marketing solicitation that stated: "You're receiving this because you may be at risk of identity theft," when in fact Defendant could not substantiate that any particular consumer was at risk for identity theft.

27. The February 2009 direct mail solicitation also stated: "WARNING: If you have used a credit or debit card before January 2009 YOU MAY BE AT RISK."

E. Representations Concerning Defendant's Service Guarantee

28. Defendant offers a \$1 million total service guarantee for its services.

29. The September 16, 2006 advertisement in the Chicago Tribune states, "We are so sure that our service works, we are backing it up with a \$1 Million Guarantee. If your identity is ever stolen while you are our client, we will fix the problem, repair your credit, and replace every dime you lost from the theft up to \$1,000,000."

30. Defendant's Web site states "[w]e will do whatever it takes to help you recover your good name and we will spend up to \$1,000,000 to do it."

31. As of July 7, 2008, Defendant's Web site claimed, "[i]f you lose money as a result of the theft, we're going to give it back to you..."

32. In fact, Defendant's \$1 million total service guarantee does not replace out of pocket expenses, but covers the cost of lawyers, investigators, and case managers for customers who become victims of identity theft due to a failure in Defendant's service.

F. Defendant's Terms and Conditions

33. As of November 17, 2009, Defendant's terms and conditions contained a clause requiring each customer to "agree that any dispute, controversy or claim arising out of, or relating to, this Agreement or the Services shall be settled by confidential arbitration in Maricopa County, Arizona, in accordance with the American Arbitration Association's ("AAA") Commercial Arbitration Rules (including without limitation the Supplementary Procedures for Consumer-Related Disputes) then in effect."

V. APPLICABLE STATUTES

34. Section 2, paragraph "a" of the Consumer Fraud Act, Iowa Code § 714.16, in relevant part, provides:

The act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice.

VI. COUNT I

VIOLATIONS OF THE IOWA CONSUMER FRAUD ACT

35. Defendant has engaged in certain unlawful acts and practices under Iowa Code § 714.16(2)(a), in that Defendant:

- A. represented to consumers, expressly or by implication, that
Defendant's services protect against all types of identity theft,
including criminal and employment identity theft, when in fact
Defendant's services did not protect against all types of identity theft;
- B. represented to consumers, expressly or by implication that Defendant's
services fully protect children from identity theft, when in fact
Defendant's services do not fully protect children from identity theft;
- C. represented to consumers by implication that the Defendant removes
its customer's personal information from Web sites where criminals
post fraudulently obtained personal information, when in fact
Defendant only notifies consumers when their information appears on
such Web sites;

- D. represented to consumers, expressly or by implication, that customers with fraud alerts will always receive a phone call prior to new credit being issued, when in fact a phone call is not required by the Fair Credit Reporting Act and many times is not placed by the potential creditor;
- E. represented to consumers by implication that a security freeze or a credit freeze provide weaker proactive protection against unauthorized use of credit than a 90-day fraud alert, when in fact they can be even more effective;
- F. represented to consumers, through direct mail marketing, that those consumers were at high risk for identity theft, when Defendant had no knowledge or facts to substantiate such a warning to those consumers;
- G. represented to consumers expressly that it will reimburse customers for losses incurred, when in fact it only covers losses resulting from a failure or defect in Defendant's services;
- H. represented to consumers, expressly or by implication, that Defendant will pay customers back for expenses incurred as a result of identity theft, when in fact Defendant will pay a professional to restore losses and expenses only where the loss is due to a failure or defect in Defendant's services; and
- I. failed in print, television, radio advertisements and on its Web site to disclose that fraud alerts are not meant to act as a proactive measure for all consumers.

VII. STATUTORY REMEDIES

36. Section 7 of the Consumer Fraud Act, Iowa Code § 714.16(7), in relevant part, provides:

If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering reimbursement outweighs the benefit to consumers or consumers entitled to the reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

In addition to the remedies otherwise provided for in this subsection, the attorney general may request and the court may impose a civil penalty not to exceed forty thousand dollars per violation against a person found by the court to have engaged in a method, act, or practice declared unlawful under this section; provided, however, a course of conduct shall not be considered to be separate and different violations merely because the conduct is repeated to more than one person.

VIII. REQUEST FOR RELIEF

WHEREFORE, THE STATE OF IOWA, respectfully requests the following relief:

- A. Finding that Defendant violated Iowa Code § 714.16(2)(a), by conduct including, but not limited to, the unlawful acts and practices alleged herein;
- B. Pursuant to Iowa Code § 714.16(7), temporarily, preliminarily and permanently enjoining Defendant from engaging in the deceptive practices alleged herein;
- C. Pursuant to Iowa Code § 714.16(7), declaring that all contracts entered into between Defendant and Iowa consumers by the use of methods and practices declared unlawful are rescinded and requiring that full restitution be made to said consumers;
- D. Pursuant to Iowa Code § 714.16(7), assessing a civil penalty in the amount of Forty Thousand Dollars (\$40,000) per violation of the Act found by the Court to have been committed by the Defendant;
- E. Pursuant to Iowa Code § 714.16A, assessing an additional civil penalty in the amount of Five Thousand Dollars (\$5,000) per violation of the Consumer Fraud Act found by the Court to have been committed by Defendant against a person 65 years of age and older;
- F. Pursuant to Iowa Code § 714.16(11), requiring Defendant to pay all costs for the prosecution and investigation of this action;
- G. Providing such other and further equitable relief as justice and equity may require.

THE STATE OF IOWA
THOMAS J. MILLER
Attorney General of Iowa

BY: 

WILLIAM L. BRAUCH #AT0001121

Special Assistant Attorney General

Director-Consumer Protection Division

1305 E. Walnut Street

Des Moines, IA 50319

Telephone: 515-281-8772

Telefax: 515-281-6771

e-mail: bill.brauch@iowa.gov